IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNIFER D. GRAMBERG,	:	
Plaintiff	:	**3:CV-98-0258**
	:	
v.	:	**(Chief Judge Vanaskie)**
	:	
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
	:	
Defendant	:	

MEMORANDUM

Plaintiff Jennifer Davis Gramberg brought this action against defendant Nationwide Mutual Insurance Company under the Pennsylvania "bad faith" statute, 42 Pa. C.S. § 8371, claiming that Nationwide failed to exercise due diligence and good faith in connection with her tort claim against the driver of her vehicle. Now pending is Nationwide's motion to dismiss Gramberg's amended complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Although Gramberg was the named insured under the policy, Gramberg was a third-party tort claimant in the context of her negligence action against the person who was driving her car when she was injured. The claim she was pursuing did not arise under an insurance policy, the essential predicate for application of the Pennsylvania bad faith statute; instead it arose under Pennsylvania common law. Moreover, Nationwide did not undertake to act as Gramberg's legal advisor and did not otherwise act in a manner as to give rise to a fiduciary-like relationship with Gramberg. Under these circumstances, Gramberg cannot maintain a claim against Nationwide under 42 Pa. C.S. § 8371 for the manner in which it handled Grambeg's tort claim against the driver of her car. Accordingly, defendant's motion to dismiss (Dkt. Entry 19) will be granted.

BACKGROUND

Prior to October 9, 1995, Gramberg purchased an automobile insurance policy from Nationwide. (Amended Complaint, Dkt. Entry 18, at ¶ 6.) On October 9, 1995, Gramberg was injured as a result of an automobile accident involving her covered vehicle. (Id. at ¶ 10.) At the time of the accident, the automobile was being operated by Jonathan Salsman, Gramberg's boyfriend; Gramberg was a passenger in the vehicle. (Id. at ¶ 10-11.) By virtue of his status as a permissive user of Gramberg's vehicle, Salsman was covered by the liability coverage offered under the Nationwide policy issued to Gramberg.

Gramberg timely notified Nationwide of the accident and of her claim against Salsman for injuries she had suffered in the mishap. Gramberg claims that Nationwide misled her into believing that Nationwide was "investigating her claim so that the appropriate payment would be made to her for her injuries." (Amended Complaint at ¶ 27.) Instead of making "appropriate payment," however, Nationwide made what Gramberg characterizes as a "totally inadequate" settlement offer on the day the statute of limitations was to expire and "discouraged [her] from retaining counsel by making her the inadequate offer of compromise and telling her that going to Court could be ugly." (Id. at ¶¶ 30-31.)

Gramberg, however, was not dissuaded by Nationwide, and did timely commence an action against Salsman. In the negligence action, Gramberg was represented by private counsel. In accordance with the terms of Gramberg's insurance policy, Nationwide tendered a defense to Salsman and provided him with liability coverage. Gramberg filed this action for bad faith against Nationwide on February 17, 1998, while her third-party tort claim was still pending. (Dkt. Entry 1.) Nationwide moved to dismiss, or in the alternative, for a more specific complaint. The action before this Court was stayed pending resolution

of the negligence lawsuit. In December 1998, Nationwide settled Gramberg's claim against Salsman for $40,000. (Exh. "D" to Def.'s Motion to Dismiss, Dkt. Entry 19.) Plaintiff filed an amended complaint on February 10, 1999. Nationwide's Motion to Dismiss the Amended Complaint was filed on March 24, 1999. The motion has been fully briefed and this matter is ripe for disposition.

DISCUSSION

In deciding a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must draw all reasonable inferences from the facts pled in the complaint and construe them in the light most favorable to the claimant.[1] Unger v. National Residents Matching Program, 928 F.2d 1392, 1400 (3d Cir. 1991). The court, however, need not accept as true "conclusory allegations of law, unsupported conclusions, and unwarranted inferences." Pennsylvania House, Inc. v. Barrett, 760 F. Supp. 439, 449-50 (M.D. Pa. 1991). The Rule 12(b)(6) movant carries the burden of showing the legal insufficiency of

[1] Generally, in deciding a motion to dismiss, courts must consider only the complaint, exhibits attached to the complaint and matters of public record. See Pension Benefits Guaranty Corp. v. White Consolidated Industries Inc., 998 F.2d 1192, 1196 (3d Cir.), cert. denied, 510 U.S. 1042 (1994). However, a court may also properly consider any "concededly authentic document upon which the complaint is based" without converting a motion to dismiss into a motion for summary judgment. Id. (purchase and sale agreement properly considered for motion to dismiss); Jordan v. SEI Corp., No. Civ. A. 96-1616, 1996 WL 296540, at *1 (E.D. Pa. June 4, 1996) (letter agreements properly considered with defendant's motion to dismiss). With its motion to dismiss, Nationwide has attached a copy of the insurance policy, a copy of the state court negligence complaint, the release and dismissal of Gramberg's negligence claim and insurance activity logs. Since the complaint is based on the insurance policy, and Gramberg does not dispute the terms of the policy, I will consider the policy along with the complaint in deciding the motion to dismiss. I will also consider the complaint and release, since those records are also not disputed by Gramberg and are related to the current action. See Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., 69 F. Supp.2d 678, 686 n.12 (M.D. Pa. 1999)(release and covenant not to sue considered in motion to dismiss). The insurance activity logs, however, do not fall under any of the exceptions and will not be considered.

the claims asserted. Johnsrud v. Carter, 620 F.2d 29, 33 (3d Cir. 1980). Such a motion will be granted only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief." Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997); Pennsylvania House, 760 F. Supp. at 449-450.

Plaintiff's claims for bad faith under 42 Pa. C.S. § 8371 relate to Nationwide's investigation and handling of Gramberg's negligence claim against Salsman. Gramberg contends that Nationwide failed to fully disclose policy benefits, failed to disclose its adverse interest, failed to properly investigate plaintiff's claim and failed to pay Gramberg the damages to which she was entitled.[2] Plaintiff contends that, as the named insured

---

[2]Gramberg's allegations include the following:

19. The defendant did not make full and complete disclosure to the plaintiff as to all of the benefits and every coverage that is provided by the applicable policy or policies along with all requirements, including any time limitations for making a claim.
21. The defendant did not properly advise the plaintiff of her entitlement to present a claim or claims under the applicable policy.
23. The defendant did not inform the plaintiff as the named insured of any potential adverse interest pertaining to the defendant's liability as the insurer under the said policy.
25. The defendant did not inform the plaintiff of their conflict of interest and of the plaintiff's apparent right to damages which ultimately would be payable under the liability provisions of the policy that insured Jonathan Salsman while operating the automobile owned by the named insured.
26. The defendant, by and through its claim adjustor, led the plaintiff to believe that the defendant recognized that the plaintiff did have a claim against Jonathan Salsman for which payment was going to be made to the plaintiff by the defendant.
27. During the period of time from March 26, 1996 to October 8, 1997, the defendant led plaintiff to believe that it was investigating her claim so that appropriate payment would be made to her for her injuries.
28. However, and unknown to the plaintiff, the defendant was not doing what it recognized as necessary to properly investigate her claim for and during this period of time.

(continued...)

under the policy, she has a right to maintain an action against Nationwide under Pennsylvania's "bad faith" statute.

Section 8371 of title 42 Pa. C.S. provides:

> **Actions on insurance policies**
> In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith towards the insured, the court may take all of the following actions:
>
> (1) award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate plus 3%.
> (2) award punitive damages against the insurer
> (3) assess court costs and attorney fees against the insurer.
> [emphasis added]

A claim under section 8371 is a separate and distinct cause of action. See Lombardo v. State Farm Mutual Auto. Ins. Co., 800 F. Supp. 208, 213 (E.D. Pa. 1992); Romano v. Nationwide Mutual Fire Ins. Co., 435 Pa. Super. 545, 646 A.2d 1228, 1231 (1994); March

---

[2](...continued)

29. Three days prior to the time that the statute of limitations would expire, the defendant told the plaintiff that she was not entitled to any payment for her injuries because of the lack of seriousness of her injuries.
30. On October 8, 1997, the day that the statute of limitations expired, the defendant made a totally inadequate offer of compromise to the plaintiff, knowing full well that the value of her claim greatly exceeded said offer.
31. On October 8, 1998, the defendant discouraged the plaintiff from retaining counsel by making her the inadequate offer of compromise and telling her that going to Court could be "ugly."
32. The defendant did not pay to the Plaintiff such compensatory damages as to which she was entitled to receive under the terms of the policy. . . .
33. The defendant had no reasonable basis for its failure and refusal to exercise due diligence and good faith toward the plaintiff in the investigation of the event and the payment to the plaintiff of such compensatory damages as to which she was entitled to receive under the terms of the policy.

Plaintiff also alleges violations of 40 Pa. C.S. § 1171.5(a)(10), 31 Pa. Code § 146.6, and 31 Pa. Code § 146.7.

v. Paradise Mutual Ins. Co., 435 Pa. Super. 597, 646 A.2d 1254, 1256 (1994). Although "bad faith" is not defined in the statute, courts have interpreted the term "bad faith" to be:

> any frivolous or unfounded refusal to pay proceeds of policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e. good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Klinger v. State Farm Mutual Auto. Ins. Co., 895 F. Supp. 709, 713 (M.D. Pa. 1995), aff'd, 115 F.3d 230 (3d Cir. 1997)(citing Black's Law Dictionary 139 (6th ed. 1990)); Adamski v. Allstate Ins. Co., 738 A.2d 1033 (Pa. Super. 1999). A plaintiff must show by clear and convincing evidence (1) that the insurer lacked a reasonable basis for denying benefits; and (2) that the insurer knew or recklessly disregarded its lack of reasonable basis. New Concept Beauty Academy Inc. v. Nationwide Mutual Ins. Co., No. Civ. A. 97-5406, 1997 WL 746203, at *3 (E.D. Pa. Dec. 1, 1997) (citing Klinger v. State Farm Mutual Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997)). The courts have also extended actions for bad faith to encompass an insurer's investigative practices, see O'Donnell v. Allstate Ins. Co., 734 A.2d 901, 906 (Pa. Super. 1999), and violations of the Unfair Insurance Practices Act (UIPA), 40 P.S. § 1171.1 et seq. Id.; Romano, 646 A.2d at 1233.

However, under Pennsylvania law, an insurer's duty to negotiate a settlement in good faith does not extend to third-party claimants. See Badet v. State Farm Mutual Automobile Insurance Co., Civ. A. No. 96-3938, 1998 WL 79911, at *2 (E.D. Pa. Feb. 24, 1998); Strutz v. State Farm Mutual Ins. Co., 415 Pa. Super. 371, 609 A.2d 569, 571 (1992)("the duty to negotiate a settlement in good faith arises from the insurance policy and is owed to the insured, not to a third-party claimant"). Thus, bad faith liability under

§ 8371 is limited to claims for first-party benefits, i.e., benefits payable to the named insured as a consequence of his or her status as a named insured. No court has held that a third-party claimant may bring an action against an insurer under § 8371 for its handling of third-party claims.

This fact is unsurprising given that the statute is limited to "an action arising under an insurance policy." A third-party's tort claim does not arise under an insurance policy; it arises under common law. It is the tortfeasor to whom the insurer owes a contractual duty to defend and to indemnify against any judgment. The claimant generally has no right to make a claim directly against the insurer, and the insurer's liability is that of an indemnitor. By limiting the bad faith cause of action to claims "arising under an insurance policy," the General Assembly plainly restricted the class of claimants to those persons who had a contractual right to benefits from the insurer with respect to the particular claim presented. Gramberg, in her capacity as a tort claimant, does not fall within this class of persons who may maintain an action under § 8371.

Consistent with this conclusion, the Honorable Raymond J. Broderick held in Seasor v. Liberty Mutual Ins. Co., 941 F. Supp. 488 (E.D. Pa. 1996), aff'd mem., 116 F.3d 469 (3d Cir. 1997), that passengers of an automobile who were "insureds" for first-party benefits could not maintain an action under § 8371 for the insurance company's conduct in relation to their claims against the driver of the vehicle in which they were passengers. Judge Broderick explained:

> Liberty Mutual was not and is not being asked to defend a liability action against any of the passengers. As passengers injured in the accident, Plaintiffs were entitled to make claims against [the driver], the 'insured' under the liability coverage section of the Policy. It would require a great stretch of judicial imagination to conclude that Plaintiffs who brought a

> negligent action against . . . the 'insured" under the Policy, should also be considered 'insureds' under the liability coverage section of the policy. As pointed out in Strutz, supra, an insurer's duty to act in good faith is 'owed to the insured' and not to claimants against the insured.

Id. at 492; see also Badet v. State Farm Mutual Ins. Co., Civ. A. No. 96-3938, 1998 WL 79911 (E.D. Pa. Feb. 24, 1998)(passengers could not maintain action against driver's insurer under § 8371 for insurer's handling of the passenger's claims against the driver).

Although Judge Broderick rested his decision on contract interpretation principles, his rationale applies with equal force to the issue of statutory interpretation raised in the matter sub judice. Only those who are entitled to make a claim directly against the insurance company for benefits payable by virtue of their status as "insureds" have a right to invoke § 8371. The fact that the claimant has a right to make a claim for some other benefits under the policy does not accord that person the right to maintain a bad faith claim in connection with the insurance company's handling of the tort claim for which the insurer owes no contractual duty to the claimant.

Gramberg seeks to avoid the fact that bad faith liability is limited to claims arising under an insurance policy by relying upon Dercoli v. Pennsylvania National Mutual Ins. Co., 520 Pa. 471, 554 A.2d 906 (1989). In Dercoli, the widow of an insured sued the insurers for breach of the duty of good faith and fair dealing. The plaintiff alleged that she was injured in an automobile accident in which her husband, who was driving the vehicle, was at fault. The plaintiff contended that the insurers induced her to refrain from hiring counsel, and that she relied upon the insurers' advice in not instituting an action against her husband's estate before the statute of limitations had expired. Id. at 907. Before the limitations period had expired, the Pennsylvania Supreme Court abolished the defense of interspousal

immunity. Id. As a result, plaintiff could have brought a tort action against her husband's estate. Id. However, the defendants did not advise the plaintiff of the change in the law or that the claim was covered under the policy. Id. Ths issue before the Court was framed as follows:

> whether the duty of fair dealing and good faith requires an automobile insurer to properly advise its insured of the insured's entitlement to present a claim or claims under the applicable policy where the insurer advises its insured that legal representation is unnecessary and induces the insured to rely upon the insurer to pay appropriate benefits?

Id. at 473. In a 4-3 decision (in which only two justices joined in the opinion announcing the judgment of the court and two justices joined in the decision in a concurring opinion), the issue was answered in the affirmative. Justice Larsen, joined by Justice Stout, wrote:

> The appellee's agents in this case voluntarily undertook to provide assistance and advice to appellant and in the process advised her against retaining independent legal counsel. The appellees were bound to deal with the appellant on a fair and frank basis and at all times to act in good faith. The duty of an insurance company to deal with the insured fairly and in good faith includes the duty of full and complete disclosure as to all of the benefits and every coverage that is provided by the applicable policy or policies along with all requirements, including any time limitations for making a claim. This is especially true where the insurer undertakes to advise and counsel the insured's claim for benefits. Under such circumstances, the insurer has a duty to inform the insured of all benefits and coverage that may be available and of any potential adverse interest pertaining to the insurer's liability under the applicable policy. . . . Assuring [plaintiff] at the outset that she need not hire an independent attorney and that she would receive all that she was entitled to receive, and then failing to inform her of her apparent right to damages . . . is hardly dealing with appellant fairly and in good faith.

Id. at 477-78 (citations omitted)(emphasis added).

Justice Papadakos, joined by Justice McDermott, concurred in the judgment, explaining that they understood the decision to be limited to an insurer voluntarily assuming fiduciary-like duties to the plaintiff. Id., 554 A.2d at 910 ("This case involves a duty

voluntarily assumed by an insurer . . . ."). The fact that the plaintiff was also an insured under the policy was hardly germane to their analysis.

Gramberg's reliance on Dercoli is clearly misplaced. First, it pre-dated enactment of § 8371. Thus, it does not address the question of whether a third-party claimant who also happens to be an insured can maintain a bad faith action under § 8371 for the insurer's handling of the third-party claim.

Second, Dercoli is confined to its unique factual scenario. The narrow scope of Dercoli was made apparent in Miller v. Keysone Ins. Co., 535 Pa. 531, 636 A.2d 1109, cert. denied, 513 U.S. 875 (1994). Miller involved a claim for first-party insurance benefits - wage loss payments under no-fault automobile insurance legislation. Plaintiff contended that the insurer knew of plaintiff's entitlement to wage loss benefits, "but consciously and deliberately elected to keep silent in its dealings with her." Id., 636 A.2d at 1111. The Pennsylvania Superior Court interpreted Dercoli to mean that an insurer had an affirmative obligation to inform an insured of all potential claims against the insurer when the following conditions existed:

> (1) the insurer has assumed the responsibility for processing its insured's claims; (2) the insurer knows that the insured is relying exclusively on its advice and counsel; and (3) the insurer has knowledge regarding an additional claim for benefits to which the claimant is potentially entitled.

Id. The Pennsylvania Supreme Court, in a 3-2 decision, reversed the Superior Court holding. Justice Zappala, writing for the majority, stated that the Superior Court's view of Dercoli was wrong. He explained that Dercoli was limited to an insurer voluntarily "act[ing] as the insured's counsel," id., 636 A.2d at 1112, and then "lull[ing] the insured into inaction . . . ." Id., 636 A.2d at 1114. It was the "insurer's knowing and purposeful

misrepresentation," he observed, that "was critical to [Dercoli's] determination that the insurers were bound to disclose all of the benefits to which the claimant was entitled." Id., 636 A.2d at 1112. See also Lombardo, supra, 800 F. Supp. at 213 (Dercoli limited to situations when insurer acts as insured's advisor). Concluding that there was no evidence that the insurer "fostered an insured's erroneous belief that a claim has been or will be processed," id., 636 A.2d at 1114, the majority in Miller absolved the insurer of liability for failure to apprise an insured of its entitlement to first-party benefits.

If an insured has no affirmative obligation to apprise its insured of first-party benefits, it necessarily follows that it owes no such obligation when an insured, in the capacity of third-party claimant, makes a claim against another insured. This conclusion is buttressed in this case by the fact that there is no allegation that Nationwide acted as Gramberg's counsel.

Gramberg seizes upon Miller's reaffirmation of an insurer's affirmative duty to disclose all available benefits where there is "evidence of fraud, intentional deception or the making of misleading statements. . . ." (Brf. in Opp. to Mot. to Dismiss at 15.) She contends that she has adequately alleged that Nationwide attempted to evade or mitigate its liability as indemnitor of her boyfriend, thereby implying fraudulent and deceptive conduct. But what Gramberg ignores is the fact that an essential element of fraud or negligent misrepresentation is detrimental reliance. See generally, Restatement (Second) of Torts, §§ 525 and 552 (1977). It is indisputable that Gramberg did not detrimentally rely upon Nationwide: she timely filed suit and negotiated a settlement of her claims against Mr. Salsman. Thus, Miller's reaffirmation that liability may be imposed where the insurer actually deceives the insured, intentionally or negligently, has no application here.

Indeed, Gramberg has not cited a single case that recognizes bad faith liability under the circumstances presented here. Courts in other jurisdictions, however, have directly held that an insurer does not owe a duty of good faith and fair dealing to a third party claimant who also happens to be an insured. See Sperry v. Sperry, 990 P.2d 381 (Utah 1999); Rumley v. Allstate Indemnity Co., 924 S.W.2d 448 (Tex. Ct. App. 1996); Wilson v. Wilson, 121 N.C. App. 662, 468 S.E.2d 495 (1996); Herrig v. Herrig, 844 P.2d 487 (Wyo. 1992) In all four cases, the plaintiff alleged a third party claim against a co-insured.[3] Each of the courts held that the plaintiffs, as third-party claimants, had no cause of action against the insurers for bad faith in their handling of the third-party claims. As the court in Rumley stated:

> Although [plaintiff] had a contractual relationship with [the insured], the claim underlying the allegations of bad faith in failing to promptly settle for policy limits is based not upon benefits payable to her under the policy, but upon her husband's tort liability to her for his negligence. [The plaintiff and her husband] are antagonists, not co-claimants. When [plaintiff] asserted a liability claim against her spouse, she assumed the posture of a third-party claimant. Although [plaintiff] had a relationship with [the insurer] . . . , in the context of her claim based on [her husband's]

---

[3]In Sperry, the plaintiff filed a claim for wrongful death against her husband with respect to an automobile accident in which her son was killed. 990 P.2d at 382. Both the plaintiff and her husband were insured under the same automobile policy. Id. Plaintiff filed an action against the insurer for bad faith and misrepresentation during settlement negotiations. Id.

In Rumley, the plaintiff filed a claim for liability benefits with the insurer for injuries sustained in an automobile accident in which her husband was driving. 924 S.W.2d at 448. Both the plaintiff and her husband were insured by the same insurer. The defendant insurer refused to pay liability benefits and the plaintiff sued for a breach of the duty of good faith and fair dealing. Id.

In Wilson, plaintiff was injured in an accident in which her husband was driving the car. She claimed that Nationwide owed her a duty of good faith and fair dealing because she was an "insured" under her husband's automobile insurance policy.

In Herrig, the plaintiff filed an action against his wife and the insurer for injuries sustained in an automobile accident. 844 P.2d at 489. Both the plaintiff and his wife were named insureds under the automobile insurance policy. Id. The plaintiff alleged that the insurer breached its duty of good faith and fair dealing. Id. at 490.

> negligence she was antagonistic to both the insurer and spouse, and it cannot be said she dared rely upon [the insured's] good faith any more than any other injured party would.

924 S.W.2d at 450 (emphasis added). See also Sperry, 990 P.2d at 384 (a finding that an insurer owed the plaintiff a duty of good faith and faith dealing would create simultaneous conflicting duties to the plaintiff and the tortfeasor, making "any such insurer an almost certain target for a claim of breach of one of these duties."); Wilson, 468 S.E.2d at 498-99 (no duty of good faith and fair dealing since "Ms. Wilson's relationship to Nationwide in this case is as a third-party because she seeks to recover from the insurer's liability coverage provisions for her husband, rather than from a coverage provision provided for her own interests"); Herrig, 844 P.2d at 491-92 ("[c]ourts simply refuse to place an insurer in the untenable position of owing a duty of good faith and fair dealing to both the insured and the adversary of the insured. . . . We are persuaded that no basis is present for extending an insurer's duty of good faith and fair dealing to third party claimants even in the context of intra-family suits.").

Had Gramberg alleged bad faith in the payment of first-party benefits, being a named insured may have been sufficient to sustain a claim, for Nationwide would have owed her a duty under the contract terms. However, in the context of this case, Gramberg is claiming bad faith in her interactions with Nationwide with respect to her third- party claim. Gramberg's claim against Salsman for negligence made her a third-party claimant, thus placing her in an adversarial position with Nationwide. Under the terms of Gramberg's insurance policy, Salsman was an insured for the purposes of liability coverage, to whom Nationwide owed a duty to defend and indemnify. Holding that an insurer owes a duty both to a third-party claimant, as well as a liability defendant, would put an insurer in the

untenable position of owing conflicting duties of good faith and fair dealing to the alleged tortfeasor and to the claimant. The Pennsylvania courts have made clear that third-party claimants are owed no duty of good faith and fair dealing. See Strutz, 609 A.2d at 571. The Dercoli decision may be read as providing a limited exception to this rule in a situation where the insurer voluntarily and actively counseled the plaintiff and committed an intentional deception on which the plaintiff relied to her detriment. However, Gramberg does not allege in her complaint that Nationwide ever agreed to act as her advocate with respect to her third-party claim. Nor does Gramberg allege that Nationwide induced her to rely solely on its advice with respect to her third-party claim. Although Gramberg does suggest that she relied on information provided by Nationwide with respect to its investigation of her claim, the fact of the matter is that she did not suffer any cognizable harm as a result of Nationwide's conduct. The nature of Gramberg's averments merely suggest the presence of an adversarial relationship between Gramberg and Nationwide as a result of Gramberg's third party claim. Absent allegations of fraud or intentional deception similar to those in Dercoli, including detrimental reliance, Gramberg has failed to state a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) will be granted. An appropriate Order is attached.

_____
Thomas I. Vanaskie - Chief Judge
Middle District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNIFER D. GRAMBERG,	:	
Plaintiff	:	**3:CV-98-0258**
	:	
v.	:	**(Chief Judge Vanaskie)**
	:	
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
Defendant	:	

ORDER

NOW, THIS _____ DAY OF FEBRUARY, 2000, for the reasons set forth in the accompanying memorandum, **IT IS HEREBY ORDERED THAT**:

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Dkt. Entry 19) is **GRANTED.**

2. The Clerk of Court is to mark this case **CLOSED**.

_____
Thomas I. Vanaskie - Chief Judge
Middle District of Pennsylvania

C:\My Documents\gramb.wpd